FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5626 OF 2005

Office notes, office Memoranda of appearances, Court's orders or directions & Registrar's orders.	Court's or Judge's Orders

Mr. N.J. Patil for the petitioners.

Mr. Vijay Killedar for the respondent.

CORAM: SMT. RANJANA DESAI, J.

DATED: 29TH AUGUST, 2005.

P.C.:-

Heard the learned counsel for the parties.

By the impugned order, the lower appellate court has rejected the application filed by the petitioners for condonation of delay of 88 days in filing the appeal.

Mr. Killedar, the learned counsel appearing for the respondent pointed out that the trial court has observed

that there is no pleading or averment made by the petitioners that their advocate had not performed his duty. The court has observed that the affidavit filed by the petitioners is concocted. The court has come to a conclusion that delay of 88 days is not property explained. There is substance in the submissions of the learned counsel for the respondent. But, in my opinion, in the interest of justice, the appeal must be heard on merit and, therefore, the delay deserves to be condoned after saddling the petitioners with costs. In the circumstances, the following order will meet the ends of justice.

O R D E R

Order dated 14/6/2005 passed by the Additional District Judge, Jaysingpur on Ex-1 in Civil Misc. Application No.13 of 2004 is set aside. The delay in the appeal filed by the petitioners in the court of Additional District Judge, Jaysingpur, is condoned on the petitioners

depositing costs quantified at Rs.2,500/- in the court of Additional District Judge, Jaysingpur. On such deposit being made, the respondent will be at liberty to withdraw the said amount without security. The restoration of the appeal is obviously subject to payment of costs. Amount to be deposited within a period of four weeks from today.

Writ petition is disposed of.

(SMT. RANJANA DESAI, J.)